

GENERAL TERMS & CONDITIONS

THE STATE OF TEXAS

BID # LC-N-0734-070-21178

COUNTY OF HARRIS

ORDINANCE # 06-1102

CONTRACT # 4600007056

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES ("Agreement") is made on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City"), a municipal corporation and MERRELL BROS., INC. ("Contractor or Vendor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

City Purchasing Agent for the Director
of Public Works & Engineering Departments
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Merrell Bros., Inc.
8811 W. 500 N.
Kokomo, IN 46901
Phone: 574-699-7782
Fax: 574-699-7478

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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3.0 PARTS INCORPORATED:

3.1 The above described sections and exhibits are incorporated into this Agreement.

4.0 CONTROLLING PARTS:

4.1 If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

5.0 DEFINITIONS:

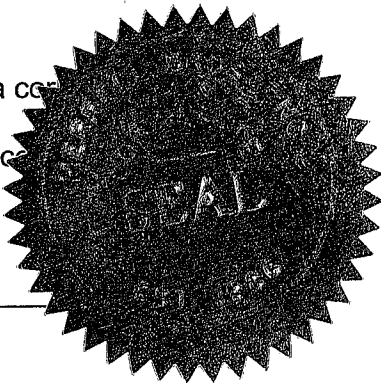
5.1 Certain terms used in this Agreement are defined in Exhibit "A".

6.0 SIGNATURES:

6.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a copy)

WITNESS (if not a copy)



By: _____

Name: _____

Title: _____

By: _____

Name: Ted Merrell

Title: Vice President

Federal Tax ID Number: 35-1681490

ATTEST/SEAL:

City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

Mayor

APPROVED:

City Purchasing Agent

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

11-15-06

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

Date

Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES:

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B."

2.0 RELEASE:

- 2.1 CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

3.0 INDEMNIFICATION:

- 3.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.1.1-3.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.1.2 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

3.1.3 THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

- 3.2 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS CONTRACT AND FOR FOUR YEARS AFTER THE CONTRACT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

4.0 INDEMNIFICATION PROCEDURES:

- 4.1 Notice of Claims. If the City or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

4.1.1 a description of the indemnification event in reasonable detail,

4.1.2 the basis on which indemnification may be due and the anticipated amount of the indemnified loss.

4.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

4.3 Defense of Claims

4.3.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

4.3.2 Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

5.0 INSURANCE:

5.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverages in the following amounts:

5.1.1 Commercial General Liability insurance including Contractual Liability insurance:

\$500,000 per occurrence; \$1,000,000 aggregate

5.1.2 Workers' Compensation including Broad Form All States endorsement:

Statutory amount

5.1.3 Automobile Liability insurance

\$1,000,000 combined single limit per occurrence

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period unless otherwise indicated.

5.1.4 Employer's Liability

Bodily injury by accident \$100,000 (each accident)

Bodily injury by disease \$100,000 (policy limit)

Bodily injury by disease \$100,000 (each employee)

5.1.5 Pollution Liability

\$1,000,000 per occurrence; \$2,000,000 aggregate (12-month period)

5.2 All insurance policies with the exception to Pollution Liability must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and

that it shall give 30 days written notice to the City before they may be canceled. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:

- 5.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- 5.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

6.0 WARRANTIES:

- 6.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.
- 6.2 With respect to any parts and goods furnished by it, Contractor warrants:
 - 6.2.1 that all items are free of defects in title, material, and workmanship,
 - 6.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
 - 6.2.3 that each replacement item is new in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
 - 6.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

7.0 LICENSES AND PERMITS:

- 7.1 Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

8.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

- 8.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

9.0 MWBE COMPLIANCE:

- 9.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 0% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them.
- 9.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the

subcontract must also be signed by the attorneys of the respective parties.

10.0 DRUG ABUSE DETECTION AND DETERRENCE:

- 10.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 10.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
 - 10.2.1 a copy of its drug-free workplace policy,
 - 10.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,
 - 10.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."
- 10.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 10.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 10.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

11.0 ENVIRONMENTAL LAWS:

- 11.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.
- 11.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

12.0 PERFORMANCE BOND:

- 12.1 The Contractor shall furnish and maintain a performance bond in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**, renewable annually, which will be for a period not to exceed one year. If the City exercises its option to extend the agreement beyond the initial term of one year and the Contractor mutually agrees, the Contractor shall furnish a performance bond for each renewal year. However, the surety providing the performance bond for the initial term of the agreement shall be under no obligation to provide the performance bond for any renewal year. The bond shall be conditioned upon the Contractor's full and timely performance of this agreement and must be issued by a corporate surety authorized to write surety bonds in the State of Texas and in the form set out in Exhibit "I".
- 12.2 If the City exercises any option years, Contractor shall maintain a Performance Bond in the amount equal to **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** of the contract amount for the option year, as determined by the City Purchasing Agent or Director. The bond must be in substantially the form attached as Exhibit "I" and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

13.0 CONTRACTOR'S PERFORMANCE:

- 13.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

14.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

- 14.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 14.2 Failure of Contractor to pay it's employees as required by law shall constitute a default under this contract for which the Contractor and it's surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 14.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractors failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

- 1.1 The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.
- 1.2 Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those

services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

2.0 TAXES:

- 2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF PAYMENT:

- 3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:

- 4.1 If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 LIMIT OF APPROPRIATION:

- 5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- 5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$390,999.96 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 5.3 The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of notice]
SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

- 5.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.0 CHANGES:

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- 6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of City Purchasing Agent or Director]

- 6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:

- 6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$25,000. A Change Order of more than \$25,000 over the approved

contract amount must be approved by the City Council.

6.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

6.3.3 The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

6.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.

6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 CONTRACT TERM:

1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 NOTICE TO PROCEED:

2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

3.0 RENEWALS:

3.1 If sufficient funds are allocated, the City Purchasing Agent, at his or her sole discretion, may make a request to Contractor to renew this Agreement for up to two additional 1-year option periods, upon at least 30 days' written notice before expiration of the initial term, or first option period, as applicable. Any renewal, pursuant to this Section, shall be upon the same terms and conditions of the Agreement.

4.0 TIME EXTENSIONS:

4.1 If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

5.0 TERMINATION FOR CONVENIENCE BY THE CITY:

5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience

is cumulative of all rights and remedies, which exist now or in the future.

- 5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.
- 5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY:

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:
- 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors;
or
 - 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.3 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR:

- 7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.

- 7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS:

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

9.0 SURETY BOND RENEWALS:

- 9.1 It is understood that a surety bond will be provided at least 30 days before end of contract term for the proper amount for the new contract term. Each bond will denote the contract term being guaranteed. Renewal of the contract by the method noted above does not obligate the existing surety company to provide a bond for the new contract term. Failure of the existing surety company to provide a bond for the new term does not constitute a default under the old contract or bond, but failure of the Contractor to obtain a substitute surety bond shall constitute a default against the Contractor; however, the City will not take action against the previous surety company.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR:

- 1.1 Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

2.0 FORCE MAJEURE:

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
- 2.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and
- 2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- 2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE

TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY:

- 3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

4.0 ENTIRE AGREEMENT:

- 4.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

5.0 WRITTEN AMENDMENT:

- 5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS:

- 6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.
- 6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES:

- 7.1 All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

8.0 NON-WAIVER:

- 8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
- 8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS:

- 9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3

years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT:

10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES:

11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

12.0 SURVIVAL:

12.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

13.0 PARTIES IN INTEREST:

13.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

14.0 SUCCESSORS AND ASSIGNS:

14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

16.0 REMEDIES CUMULATIVE:

16.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

EXHIBIT "A"

DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Plant Manager" means the plant manager for the Southeast Water Purification Plant, who is the representative of the Department in charge of the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" means the Directors of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

EXHIBIT "B"
SCOPE OF WORK

ONSITE WATER TREATMENT SLUDGE DEWATERING AND DISPOSAL SERVICES

1.0 INTRODUCTION:

- 1.1 Contractor shall provide all labor, materials, equipment, transportation and supervision to provide Onsite Water Treatment Sludge Dewatering and Disposal Services for the Southeast Water Purification Plant (SEWPP).

2.0 OVERVIEW:

- 2.1 Contract services are required for the onsite dewatering and disposal of liquid sludge produced in the water treatment processes at the Southeast Water Purification Plant. These services must meet or exceed all requirements of the Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ) (formerly Texas Natural Resources Conservation Commission (TNRCC)), as well as local regulations governing these activities.

3.0 BACKGROUND INFORMATION:

- 3.1 The Southeast Water Purification Plant (SEWPP) is located at 3100 Genoa Red-Bluff Road, Houston, TX 77034, Key Map 578. The City of Houston Department of Public Works and Engineering has operated this plant since June 1, 2006. The daily average treated water flow rate is 85 million gallons per day, and the annual water treatment sludge produced is approximately 7,000 dry tons per year. The water treatment sludge is thickened using gravity thickeners and is currently wet-hauled and disposed of offsite.
- 3.2 The SEWPP has a 25-acre surface area onsite landfill (monofill) permitted by TCEQ. The City will require the Contractor to supply the onsite equipment necessary to haul and dispose of the dewatering sludge in the monofill in accordance with the TCEQ permit requirements. The Contractor shall also maintain the monofill as required by the TCEQ permit.
- 3.3 The quantity of Water Treatment Sludge will vary from day to day, month to month, and year to year. The amount of sludge will also depend upon raw water turbidity, chemical dosages, and treated water flow capacity.
- 3.3.1 The amount of equipment required to supply this service for the City will vary with changing treated water flow rates and chemical dosages.
- 3.3.2 There will be instances when the Plant Manager, or his designee, will request that a trailer be moved and/or the disposal of the trailer contents before the trailer is completely full.
- 3.4 The Contractor's actions and/or lack of action shall not affect the normal operation of the SEWPP. The City will not tolerate inaction or action by the Contractor that could jeopardize the operation of the plant.

4.0 SAFETY AND SECURITY REQUIREMENTS:

- 4.1 The Contractor shall be completely familiar with, and shall comply with all local, City, State of Texas and Federal OSHA regulations and requirements as applicable for all

services performed under this Contract.

- 4.2 The Contractor shall develop a spill response plan and be available to respond in no more than eight (8) hours to all liquid sludge or sludge polymer spills and provide thorough cleanup and removal of spilled Material.
- 4.3 The Contractor shall strictly abide by all security and safety regulations issued by the City. The City shall provide the Contractor copies of all updates or changes to the City's security and safety regulations. The Contractor shall implement these updates or changes upon notification.
- 4.4 Contract company-owned and/or leased vehicles entering City facilities must have company logos displayed on both sides of the vehicle. Company logos must be displayed on the body of the vehicle. Contract personnel utilizing their personal vehicles for company business inside a City facility must also display company logos. They may display their company logo on each side of their rear side windows. If the vehicle is a pick-up truck the logo may be placed in the back glass. The logo must not be smaller than 5" X 8" in size and must be easily read from a distance of not less than 100 feet. Logos must remain on the vehicle while inside the City facility and may not be removed until the vehicle exits the gate. All equipment on rubber tires, such as mobile cranes, backhoes, air compressors, welding machines, etc. must also display company logos while being operated inside a City facility.
- 4.5 Entry of motor vehicles into the City facility is restricted. Only when required and upon prior approval by the City, non-company vehicles will be allowed inside the facility.
- 4.6 Contractor shall not block roads or streets without permission from City of Houston/PUD management. When Contractor obstructs a road or street, Contractor shall provide approved barricades and warning devices.
- 4.7 The Contractor's employees and/or subcontractor(s) shall wear photo identification badges when entering City facilities and plant sites. Contractor must control the distribution of their company photo identification badges so only current active employees have an issued badge.
- 4.8 **CITY Visitor Contractor Badge Eligibility:** Contractor employee(s)/subcontractor(s) must be U.S. Citizen or have a legal work permit. Each person must also present a valid state driver's license or state – issued photo identification card. An alien card, with photo, passport, or other U.S. state or U.S. federal photo documentation is acceptable to present for identification purposes. Contractor shall conduct background security checks, to include criminal records and driving records, on all employee(s)/subcontractor(s) at time of hiring and periodically thereafter and provide copies to PUD Security prior to first scheduled day of work for each employee.
- 4.9 The Contractor's employee(s) and/or subcontractor(s) shall wear a distinct color uniform with company logos to easily identify the company for whom they work. The color will be discussed and agreed upon at the Pre-Performance Conference prior to any work being performed.

5.0 SCOPE OF SERVICES:

- 5.1 The Contractor shall provide all applicable permits, belt filter press, labor, chemicals, and all other equipment and appurtenances as required to provide guaranteed Onsite Water Treatment Sludge Dewatering And Disposal Services, with the exception of the monofill disposal permit. This permit has already been obtained by the City. However, the

Contractor will be required to dispose of wastes in the monofill in accordance with the permit terms and conditions (as attached to this bid proposal) and keep the necessary records to demonstrate such compliance.

5.1.1 The City will bear the cost of changes to the landfill operation requirements as a result of changes to the TCEQ issued operating permit. When this happens, the City will negotiate a fair and reasonable amount with the Contractor regarding the monthly operating cost changes.

5.2 The Contractor shall transport and dispose of water treatment sludge to the landfill at the SEWPP.

5.2.1 Contractor shall abide by and maintain full compliance with all federal, state, and local regulations, specific to any and all of their actions and equipment under this contract.

5.2.2 Contractor shall immediately remove from service any equipment that fails to meet all Texas Department of Transportation and Occupational Safety and Health Act (OSHA) requirements and replace with equipment that meets all requirements.

5.2.3 Applicable regulations governing water treatment sludge onsite dewatering and disposal activities include the current versions of the following regulations, but are not limited to these regulations:

5.2.3.1 U.S. Environmental Protection Agency (EPA) 40 CFR Part 503.

5.2.3.2 Texas Commission on Environmental Quality (TCEQ) 30 TAC Chapter 312.

5.3 The Contractor shall designate a Project Manager for this contract by submitting in writing a letter to the Director of Public Works and Engineering. This letter shall be delivered to the City within 10 days of notification of contract award by City Council. There will be a Pre-Performance Conference held prior to any work being performed.

5.3.1 The Project Manager must be LOCALLY available at all times during the contract term.

5.3.2 The Project Manager shall have full authority to represent the Contractor in making decisions and in the execution of the services to be performed under the contract.

5.4 The Contractor shall mobilize and assemble the belt filter press system and all necessary equipment at the SEWPP prior to providing the onsite dewatering service under this contract. This timeline/schedule will be discussed and finalized at the Pre-Performance Conference. All mobilization and assembling cost will not be an additional fee but will be included in the monthly service fee as a lump sum.

5.5 The Contractor shall provide all maintenance work on the onsite dewatering equipment. The City will not be charged any additional fees for maintenance services on the equipment.

5.6 The Contractor shall provide the onsite dewatering service processing thickened solids (approx. 4-5% solid concentration) to generate a dewatered material at 20-25% solids concentration for disposal.

- 5.7 The Contractor shall provide a sufficient number of roll-on/roll-off containers and tractors at the SEWPP to enable continuous operation of the described onsite water treatment sludge dewatering and disposal service.
- 5.7.1 Contractor shall utilize only trailers and roll-on/roll-off containers that are watertight.
- 5.7.2 Contractor shall provide all maintenance on the trailers and roll-on/roll-off containers and shall ensure that all required licenses and inspections are current.
- 5.7.3 Contractor must ensure that all trailers used to transport dewatering sludge meet all regulatory requirements.
- 5.7.4 Contractor will be allowed to use other transportation equipment as long as it will enable the continuous operation of the on-site water treatment sludge dewatering and disposal services.
- 5.8 The Contractor shall provide MSDS sheet of the sludge polymer, estimated quantity, and its unit price. Upon approval by the City, the Contractor shall supply the sludge polymer, and the City will pay for all polymer costs associated with onsite dewatering services as a direct pass-through cost.
- 5.9 The Contractor shall supply trailers for hauling and disposing of the dewatered sludge in the SEWPP landfill.
- 5.10 The Contractor shall supply all necessary labor. The Contractor shall provide the necessary documentation to demonstrate all personnel working in this Contract are legally authorized to work in the United States.
- 5.11 City will provide all required utilities (electricity, water, sewage) for the onsite solids dewatering and disposal service.
- 5.12 The onsite operations will normally operate between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday. The Plant Manager, or his designee, will determine if service outside normal working hours is required at the site. The City will not be charged an additional fee for the services outside of the normal working hours, or on weekends or holidays.
- 5.13 The Contractor must be equipped to exchange information electronically with the City in a format that is compatible with Microsoft Office Software. It shall be solely the Contractor's responsibility to facilitate this electronic exchange. The Contractor will bear all cost for providing this interface with the City.
- 5.13.1 The Contractor shall provide reports as described below:
- 5.13.1.1 All data required for federal, state, and local reports.
- 5.13.1.2 Reports as requested by the Plant Manager, or his designee.
- 5.13.1.3 Monthly cost records by the 15th of the following month.
- 5.13.1.4 Monthly water treatment sludge quantity reports by the 15th of the following month.

5.13.2 Contractor shall provide other reports as reasonably stipulated by the Plant Manager, or his designee, on a routine or as needed basis. The City will not be charged an additional fee for these services.

5.14 The Contractor shall provide a dewatered sludge sample analysis at least once per year at NO additional cost to the City. All parameters as required by TCEQ Instruction and Procedural Information for the Registration of the Land Application of Water Treatment Sludge shall be analyzed.

5.15 Contractor shall ensure its employee and/or subcontractors comply with the regulations governing the issuance of a Storm water Discharge Permit by the EPA/TCEQ. The permit, in general, requires the City to eliminate or remedy any erosion of soil into the waterways and prevent any contaminants from reaching the waterways. Contractor shall not disturb vegetated areas to the point where the soil may be exposed to erosion.

5.16 Contractor shall not drive tractor(s) and/or trailer(s) over wet ground.

5.17 Contractor shall clean up leaks from transmissions, radiators, grease seals, trailers, etc. so none of the leaking material enters the storm sewers on the plant site.

5.18 Contractor shall remove the dirt, mud, etc. from the outside of the trailer(s) and/or tractor(s) only in areas designated by the Plant Manager, or his designee.

5.19 Contractor shall maintain all roads leading into and out of monofill. This road should be maintained to remain serviceable and promote drainage. Internal roadways within the sludge disposal area consist of a compacted subgrade overlain of geotextile material with a crushed stone-wearing surface (Granite).

5.19.1 The road base into the monofill is currently 2' above the drying area bottom and the engineering estimate should last for a five (5) year period. The primary consideration for deciding when the access road should be raised is one of equipment operation.

5.19.2 The Contractor is responsible for maintaining the asphalt road leading into and out of monofill area, and crushed granite may be used as a temporary repair, however all repairs must be completed with a 2" hot mix of asphalt-wearing surfacing product.

6.0 CONTRACTOR'S LIABILITY:

6.1 In addition to any insurance which is required, the Contractor understands that it will be liable to the City for any damage caused to City property or any individual injury or accident caused by Contractor or its subcontractors, employees, or agents which may occur in the course of performing the onsite dewatering and disposal services at City facilities.

6.2 Contractor is responsible for any onsite dewatering and disposal equipment damaging City property. Contractor must replace or repair any City property damaged by its or its subcontractor's, employee's or agent's negligence at no cost to the City.

7.0 ADDITIONS & DELETIONS:

7.1 The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment,

supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

8.0 WARRANTY OF SERVICES:

- 8.1 *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as partial or complete performance of the Contract.

"Correction" as used in this clause, means the elimination of a defect.

- 8.2 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City. This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

- 8.3 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the Contract price.

9.0 ESTIMATED QUANTITIES NOT GUARANTEED:

- 9.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of Onsite Water Treatment Sludge Dewatering and Disposal Services during the term of this contract. The quantities may vary depending upon the actual needs of the Public Works & Engineering Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into with third parties based on the City purchasing/requiring all the quantities specified herein.

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"
MWBE REQUIREMENTS

(Affirmative Action Division Waived M/WBE Goal to Zero (0%) Percent)

Documentation Attached to Procurement File

ATTACHMENT "A"
CITY OF HOUSTON
SCHEDULE OF M/WBE PARTICIPATION

DATE OF REPORT: _____

BID No.: _____

FORMAL BID TITLE: _____

NAME OF MINORITY/ WOMEN SUBCONTRACTOR	AFFIRMATIVE ACTION DIVISION CERTIFICATION No.	STREET ADDRESS AND CITY, STATE, ZIP CODE	TELEPHONE No.	SCOPE OF WORK	AGREE PRICE
TOTAL.....					\$ _____
M/WBE PARTICIPATION AMOUNT.....					\$ _____ %
TOTAL BID AMOUNT.....					\$ _____

ATTACHMENT "A" (CONTINUED)

IF YOU HAVE USED YOUR BEST EFFORTS TO CARRY OUT THE CITY'S M/WBE POLICY BY SEEKING SUBCONTRACTS AND SUPPLY AGREEMENTS WITH MINORITY AND WOMEN BUSINESS ENTERPRISES, YET FAILED TO MEET THE STATED PERCENTAGE GOAL OF THIS BID DOCUMENT, LIST BELOW YOUR GOOD FAITH EFFORTS FOR COMPLIANCE (DEFINITION OF REQUIREMENTS CAN BE OBTAINED THROUGH AFFIRMATIVE ACTION AT (713) 837-9000).

Due to the unique equipment and chemical requirements of this project,

we were unsuccessful in locating any vendors from the www.houston.mwdbe.com

website. Please find attached our search results from the City of Houston's

MWDBe Directory.

THE UNDERSIGNED WILL ENTER INTO A FORMAL AGREEMENT WITH THE MINORITY AND/OR WOMEN SUBCONTRACTORS AND SUPPLIERS LISTED IN THIS SCHEDULE CONDITIONED UPON AWARD OF A CONTRACT FROM THE CITY.

NOTE:

ALL FIRMS LISTED ABOVE MUST BE CERTIFIED (OR ELIGIBLE FOR CERTIFICATION) BY THE AFFIRMATIVE ACTION DIVISION. THIS SCHEDULE OF M/WBE PARTICIPATION SHOULD BE RETURNED, IN DUPLICATE, WITH THE BID FORM.

Merrell Bros., Inc.

BIDDER COMPANY NAME

Terry Merrell

SIGNATURE OF AUTHORIZED OFFICER OR AGENT OF BIDDER

Terry Merrell

NAME (TYPE OR PRINT)

Treasurer

TITLE

ATTACHMENT "C"
CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled **"THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT"** and contain the following terms:

1. _____ (M/WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director")
2. _____ (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 – "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the City's Affirmative action policy and/or ordinance contact the Affirmative Action Division at (713) 837-9000, 611 Walker, 20th Floor, Houston, Texas.

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, Ted Merrell Vice President as an owner or officer of
(Name) (Print/Type) (Title)
Merrell Bros., Inc. (Contractor)
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:


1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date 8/25/06

Contractor Name Merrell Bros., Inc.

Signature 

Title Vice President

EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION

I, Ted Merrell Vice President as an owner or officer of
(Name) (Print/Type) (Title)
Merrell Bros., Inc. (Contractor or Vendor)
(Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from 2/25 to 8/25, 2006.

DM
Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

DM
Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

DM
Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

DM
Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 0.

DM
Initials From 2/25/06 to 8/25/06 the following test has occurred
(Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	20	0	2	22
Number Employees Positive	0	0	0	0
Percent Employees Positive	0	0	0	0

Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

8/25/06
(Date)

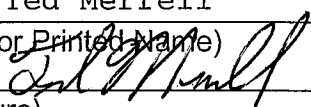
Ted Merrell
(Typed or Printed Name)

(Signature)
Vice President
(Title)

EXHIBIT "H"
FEES AND COSTS

BID ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE
YEAR ONE (1)			
1	Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, materials and supplies necessary to operate and maintain onsite dewatering and disposal of water treatment sludge at the Southeast Water Purification Plant. In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$32,583.33
BID ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE
YEAR TWO (2)			
1	Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, materials and supplies necessary to operate and maintain onsite dewatering and disposal of water treatment sludge at the Southeast Water Purification Plant. In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$32,800.00
BID ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE
YEAR THREE (3)			
1	Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, materials and supplies necessary to operate and maintain onsite dewatering and disposal of water treatment sludge at the Southeast Water Purification Plant. In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$33,286.66

BID ITEM NO.	DESCRIPTION	UNIT	UNIT PRICE
YEAR FOUR (4), OPTION YEAR ONE (1)			
1	Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, materials and supplies necessary to operate and maintain onsite dewatering and disposal of water treatment sludge at the Southeast Water Purification Plant. In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$33,793.83
YEAR FIVE (5), OPTION YEAR ONE (2)			
1	Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, materials and supplies necessary to operate and maintain onsite dewatering and disposal of water treatment sludge at the Southeast Water Purification Plant. In Strict Accordance with the Scope of Work & Exhibits.	Per Month	\$34,188.66

EXHIBIT "A"
PERFORMANCE BOND

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HARRIS

§

§

THAT WE, Merrell Bros., Inc. as principal, hereinafter called "Contractor" and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Houston, a municipal corporation in the sum of Four Hundred Thousand and 00/100 (\$400,000.00)

DOLLARS. (\$ 400,000.00) for the payment of which sum, well and truly to be made to the City of Houston, and its successors, the said Contractor and surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the said Contractor has on or about this day entered into a contract in writing with the City of Houston, Texas, entitled On site Water Treatment, Sludge Dewatering, and Disposal Services
Bid #LC-N-0734-070-21178 which is made a part of this instrument as fully and completely as if set in full herein.

NOW, THEREFORE, if the said Contractor shall faithfully and strictly perform as set out in said contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and shall comply strictly with each and every provision of said contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the said City of Houston or its representatives from the exercise of any diligence whatever in securing compliance on the part of the said Contractor with the terms of the said contract, and the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his contract and agrees that it, the said Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the said Contractor in all matters pertaining to said contract.

It is further expressly agreed by said Surety that the City of Houston or its representatives are at liberty at any time, without notice to the Surety, to make any changes in said contract and in the work to be done thereunder, as provided in said contract, and in the terms and conditions thereof, or to make any changes in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking, or release said Surety therefrom.

It is expressly agreed and understood that the Contractor and surety will fully indemnify and save harmless the City of Houston from any liability, loss, cost, expense or damage arising out of or in connection with the work done by the Contractor under said Contract.

In the event that the City of Houston shall bring any suit or other proceeding at law on this bond, the Contractor and Surety agree to pay to the said City the sum of ten percent (10%) of whatever amount may be recovered by the City in said suit or legal proceeding, which sum of ten percent (10%) is agreed by all parties to be payment to the City of Houston for the expense of or time consumed by its City Attorney, his assistants and office force and other cost and damage occasioned to the City. This said amount of ten percent (10%) is fixed and liquidated by the parties, it being agreed by them that the exact damage to the City would be difficult to ascertain.

This bond and all obligations created hereunder shall be performable in Harris County, Texas.

IN TESTIMONY WHEREOF, witness our hands this 25th day of August, A.D. 20 06

ATTEST:

(Corporate Seal)

Merrell Bros., Inc.
(Principal)

By: Ryan Zeck By: T. Merrell
Name: (Typed) Ryan Zeck Name: (Typed) Ted Merrell
Title: Witness/V.P. of Operations Title: Vice President

ATTEST/WITNESS:

Hanover Insurance Company
(Full Name of Surety)

By: Brad Collins
Name: (Typed) Brad Collins
Title: Witness

By: Hugh Steven Collins
Name: (Typed) Hugh Steven Collins
Title: Attorney-in-Fact

The foregoing bond is approved and accepted this 25th day of August, A.D. 20 06.

REVIEWED:

Legal Assistant

Certified Copy Void Without Hanover Watermark
This Power of Attorney may not be used to execute any bond with an inception date after May 1, 2009

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

**POWERS OF ATTORNEY
CERTIFIED COPY**

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

Michael C. Kitchell, Michael C. Platt and/or Hugh Steven Collins

of **Logansport, IN** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:
Any such obligations in the United States, not to exceed Five Hundred Thousand and No/100 (\$500,000) in any single instance

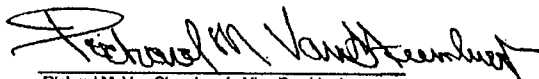
and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Assistant Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by a Vice President and an Assistant Vice President, this **11th** day of **May**, 2006.



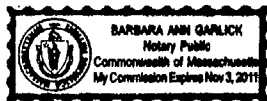
THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

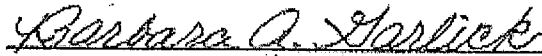

Richard M. Van Steenburgh, Vice President


Paul F. Carleo, Assistant Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this **11th** day of **May** 2006, before me came the above named Vice President and Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.




Notary Public

My commission expires on November 3, 2011

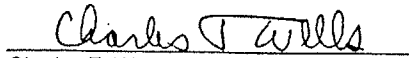
I, the undersigned Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Assistant Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this **25th** day of **August**, 2006.

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA


Charles T. Wells, Assistant Vice President

Certified Copy Void Without Hanover Watermark

EXHIBIT "J"
PERMIT TO PROCESS WASTEWATER TREATMENT PLANT SLUDGE



RECEIVED

S-2-06 FROM
TCEQ

PERMIT NO. WQ0003523000

[For TCEQ Office Use Only:

EPA ID No. TXL 0050000]

This is a renewal that replaces

TPDES Permit 03523 issued May 23, 1994.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

P.O. Box 13087

Austin, Texas 78711-3087

PERMIT TO PROCESS WASTEWATER TREATMENT PLANT SLUDGE

under provisions of Chapter 26 of the Texas Water Code and under provision of Texas Health & Safety Code Ann. Chapter 361 (Vernon)

I. Name of Permittee: City of Houston

Address: Public Utilities Department
P.O. Box 1562
Houston, Texas 77251-1562

Type of Permit: Renewal

II. Nature of Business Producing Waste: Public water treatment plant (SIC Code 4941).

III. General Description and Location of Waste Treatment Facility:

Description: The facility is located at the City of Houston Southeast Water Purification Plant and consists of a 22.98 acre water treatment plant sludge monofill. The facility is designed to handle approximately 100 cubic yards per day of water treatment plant sludge, with the estimated life of the facility being 25 years.

Location: The solid waste management facility is located at 3100 Genoa-Red Bluff Road in Harris County, Texas (See Attachment A).

The permittee is authorized to process, store and dispose of wastes in accordance with the limitations, requirements, and other conditions set forth herein. This permit is granted subject to the rules of the Commission and other Orders of the Commission and laws of the State of Texas. Nothing in this permit exempts the permittee from compliance with applicable rules and regulations of the TCEQ. This permit is issued under the Texas Pollutant Discharge Elimination System (TPDES) program. The permittee must handle and dispose of sewage sludge in accordance with all applicable state and federal regulations to protect public health and the environment. This permit does not authorize any invasion of personal rights nor any violation of federal, state or local laws or regulations.

This permit and the authorization contained herein shall expire at midnight, five years from the date issued.

ISSUED DATE: AUG 30 2005

For the Commission

IV. CONDITIONS OF THE PERMIT: No discharge of pollutants to surface water in the State is authorized.

Character: Water treatment sludges from the Southeast Water Purification Plant.

Volume: No discharge is authorized by this permit. Note Special Provision No. 2.

Drainage Area: Located in the drainage area of Armand Bayou in Segment No. 1113 of the San Jacinto-Brazos Coastal Basin.

V. SLUDGE USE AND DISPOSAL PROVISIONS:

A. General Operational Requirements:

1. The site and monofill shall be managed and operated in accordance with the most recent and applicable rules adopted by the Commission relating to water treatment sludge monofills.
2. Prior to utilization of any facility component authorized by this permit, the permittee shall submit written certification that facility components have been constructed in accordance with the permit. This certification shall be prepared, signed and sealed by a Professional Engineer licensed in Texas.
3. All facility employees and other persons participating in the facility operations shall be qualified by training, education, and experience to perform their duties so as to achieve compliance with this permit. The permittee shall ensure that all personnel are trained, and if necessary, obtain Letters of Competency in municipal solid water management commensurate with their levels and positions of responsibility. The permittee shall further ensure that all personnel are familiar with safety procedures, contingency plans, and the requirements of the Commission's rules and this permit.

C. Standard Provisions:

1. This permit is granted in accordance with the Texas Water Code and the rules and other Orders of the Commission and the laws of the State of Texas.
2. In the event the permittee discharges wastes or wastewater which exceed the quantity authorized by this permit, the permittee shall give oral notice to the TCEQ Region 12 Office in 24 hours and written notice to the Executive Director in Austin in five working days.
3. Acceptance of this permit constitutes an acknowledgment and agreement that the permittee will comply with all the terms, provisions, conditions, limitations and restrictions embodied in this permit and with the rules and other Orders of the Commission and the laws of the State of Texas. Agreement is a condition precedent to the granting of this permit.

4. Prior to any transfer of this permit, Commission approval must be obtained. The Commission should be notified, in writing, of any change in control or ownership of the facility authorized by this permit. Such notification should be sent to the Land Application Team of the Water Quality Division.
5. The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.
6. The permittee is subject to the provisions of 30 TAC §305.125 and to pertinent changes of rules of the Commission.
7. The permittee shall remit an annual waste treatment inspection fee to the Commission as required by 30 TAC Section 305 (Subchapter M). Failure to pay this fee may result in revocation of this permit.

C. Reporting Requirements:

The permittee shall keep records of all sludge disposal activities. Such records will include the following information:

1. Amount of sludge disposal dry weight (tons) at the disposal site.
2. Date(s) of disposal.

The above records shall be maintained on a monthly basis and shall be reported to the Water Quality Division, Land Application Team and the TCEQ Region 12 Office by September 30th of each year. The permittee shall maintain the above records for five years, and they shall be made available to the TCEQ upon request.

D. Facility Design, Construction and Operation:

1. General Design and Construction
 - a. Facility design, construction, and operation must comply with this permit, the TCEQ rules, and be in accordance with the site development plan for the construction and the operation approved herein.

- b. The entire waste management facility shall be designed, constructed, operated, and maintained to prevent the release and migration of any waste or contamination, and to prevent inundation of and/or discharge from the areas surrounding the facility containment system which will collect spills and incident precipitation in such a manner as to:
 - i. Preclude the release of any contaminated runoff, spills, or precipitation.
 - ii. Prevent washout of any waste by a 100-year storm.
 - iii. Prevent run-on into the disposal area.
- c. All contaminated water shall be managed as specified in Special Provision No. 2.
- d. Liners: All bottoms and sides of the mono-fill cells shall serve as barriers to waste and leachate movement. At a minimum, liners shall consists of the following:
 - i. In-situ or placed and compacted clay soils meeting the following requirements:
 - 1. More than 30% passing a No. 200 mesh sieve.
 - 2. Liquid limit greater than 30%
 - 3. Plasticity index greater than 15
 - 4. A minimum thickness of 3 feet
 - 5. Permeability equal to or less than 1×10^{-7} cm/sec.
 - 6. Soil compaction will be 95% standard proctor at optimum moisture content.
 - ii. Membrane lining with a minimum thickness of 20 mils, and a leachate collection system.
 - iii. An alternate method of lining may be utilized with prior approval from the Executive Director.

The permittee shall furnish certification by a Professional Engineer licensed in Texas that the completed lining meets the appropriate criteria prior to utilization. The certification shall be sent to the Land Application Team (MC148) and to the TCEQ Region 12 Office.

- iv. Final Cover: At a minimum, final cover shall consist of two feet of soil/clay. The coefficient of permeability of the final cover shall not exceed that of the liner.

E. Closure Plans:

1. The permittee of an active sludge unit shall submit a written "Closure and Post Closure Plan" to the Land Application Team (MC 148) of the Water Quality Division, for approval, at least 180 days prior to the date that the active sludge unit closes. After the plan has been approved by the Executive Director, it shall be reviewed every three years for compliance with applicable state and federal laws. The permittee shall be responsible for any corrections necessary to achieve compliance with applicable state and federal law. The Executive Director may reduce the post closure maintenance period for surface disposal sites if all wastes and waste residues have been removed during closure. The plan shall describe how the sludge unit will be closed, and shall include a discussion of how public access to the surface disposal site will be restricted for a minimum of three years after the last sludge unit in the surface disposal site closes.
2. The permittee shall also comply with the post-closure care maintenance requirements as discussed below for the duration of the post-closure period for these units or sites. For a minimum of the first three years after the completion of final closure, the permittee shall retain the right of entry to and maintain all rights-of-way of a closed surface disposal site in order to conduct periodic inspections of the closed site.
3. Following completion of the post-closure care maintenance period for each surface disposal site, the permittee shall submit to the executive director for review and approval a documented certification, signed by a Professional Engineer licensed in Texas, verifying that post-closure maintenance has been completed in accordance with the approved post-closure plan. The submittal to the executive director shall include all applicable documentation necessary for the certification of completion of post-closure care maintenance. Once approved, this certification shall be retained by the permittee.

F. Special Provisions:

1. The permittee is authorized to dispose of water treatment plant sludge from the City of Houston Southeast Water Purification Plant only. No hazardous, toxic, radioactive, regulated asbestos, or any industrial solid waste, will be accepted, stored, processed, or disposed of at this site.
2. Waste control facilities shall be provided to retain all process generated wastewater produced by the facility for a 50-day period plus all rainfall and runoff which would enter the waste control facilities as a result of 9.5 inches or less of rainfall occurring during any 24-hour period. The waste control facilities shall be dewatered to provide the minimum freeboard to accommodate the rainfall and rainfall runoff resulting from a 25-year, 24-hour rainfall event within a 21-day period following such rainfall event, weather permitting. Dewatering shall also occur when the process generated waste and / or wastewater or accumulated solids and rainfall runoff reduces such freeboard. Dewatering shall be by evaporation and/or irrigation to land with no runoff of irrigation water from any irrigation site into water in the State of Texas.
3. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater within 21 days following a 25-year, 24-hour rainfall event shall be available for use at the site at all times.
4. Wastewater containment structures shall be isolated from stormwater run-on by berms or diversion terraces. The permittee shall not take any action which will divert rainfall runoff onto the property of adjacent landowners without the permission of such landowners.
5. All solid waste materials resulting from cleaning operations and the sludge deposited in waste control facilities and drainage ditches shall be disposed of so that no contamination of surface waters can occur. All waste shall be disposed of in a manner such that contamination of surface and ground waters is prevented and such that nuisance conditions (such as insect infestations or objectionable odors) are controlled. Any areas on which solid waste is stockpiled shall be isolated by dikes, terraces, and/or terrain to prevent the discharge of any contaminated runoff into waters in the State of Texas.
6. All necessary steps to protect groundwater from contamination by wastewater from the confinement facility shall be taken.
7. Off-site discharge of irrigated wastewater is prohibited. Irrigation practices shall be designed and managed so as to prevent ponding of effluent on the ground, prevent contamination of ground or surface waters and to prevent the occurrence of nuisance conditions. Tailwater control facilities shall be provided as required to prevent the release of applied wastewater to waters in the State of Texas.

8. All facilities including ponds, pipes, ditches, pumps, and irrigation equipment shall be utilized and maintained as necessary in order to prevent any unauthorized discharge to waters in the State.
9. Any substantial increases in waste production and/or any decreases in wastewater containment or disposal capabilities shall be reported to the Executive Director as they occur.
10. The permittee shall maintain a minimum of a 150-foot buffer zone from the solids disposal sites to any water wells, including wells that are off-site.
11. Water retention facilities shall be lined to control seepage in one of the following manners:
 - A. In-situ or placed and compacted clay soils meeting the following requirements:
 - i. More than 30% passing a No. 200 mesh sieve
 - ii. Liquid limit greater than 30%
 - iii. Plasticity index greater than 15
 - iv. A minimum thickness of 12 inches
 - v. Permeability equal to or less than 1×10^{-7} cm/sec.
 - vi. Soil compaction will be 95% standard proctor at optimum moisture content
 - B. Membrane lining with a minimum thickness of 20 mils, and an underdrain leak detection system.
 - C. An alternate method of pond lining may be utilized with prior approval from the Executive Director. The permittee shall furnish certification by a Professional Engineer, licensed in the State of Texas, that the completed pond lining meets the appropriate criteria prior to utilization. The certification shall be sent to the Land Application Team (MC 148) and Region 12 Office of the TCEQ.
12. Disposal of sludge shall not cause or contribute to the taking of any endangered or threatened species of plant, fish or wildlife.
13. Disposal sludge shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species.
14. Sludge shall not be disposed under provisions of this section on land within a designated 100-year flood plain.

City of Houston

TPDES Permit No. WQ0003523000

15. The permittee shall give 180 days prior notice to the Executive Director of any change planned in the disposal practice.
16. The permittee shall provide financial assurance for closure in accordance with the provisions of 30 TAC §330.66. The permittee shall comply with the most recent and applicable rules adopted by the Commission regarding financial assurance.
17. The sludge is to be accepted at this site at a rate averaging 100 cubic yards per day over the total life of the site.